



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.R. NO. 29, H.D. 1, REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO IDENTIFY AND ANALYZE PERMISSIBLE AND UNLAWFUL METHODS OF FUNDRAISING FOR CHARITABLE ORGANIZATIONS

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, April 5, 2013

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Laura Maeshiro, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General strongly opposes this measure.

The purpose of this resolution is to request the Attorney General to identify and analyze various fundraising methods of charitable organization, including raffles, and make a determination on which fundraising methods are permissible and which methods may constitute unlawful gambling.

All persons and entities should look to chapter 712, part III, section 712-1220 through section 712-1231, Hawaii Revised Statutes, titled "Gambling Offenses", in order to determine whether any conduct constitutes gambling. This is the legal authority for the State of Hawaii on gambling, and this should be used as a legal guideline.

The Department has grave concerns about setting forth guidelines for any organization as to what constitutes gambling. It is too difficult, if not impossible, to pre-determine or speculate on the various types of "fundraising methods" that a charitable organization could conduct to determine whether or not it violates the gambling laws. Any alleged conduct, regardless of who is doing it and for what purpose, would have to be reviewed on a case-by-case basis. Criminal cases are made on a case-by-case basis, from a police officer's probable cause determination, to the charging decision by the prosecutor. It is impossible to pre-determine whether any hypothetical course of conduct constitutes a criminal offense as there are a *multitude* of ways an organization could conduct a fundraiser. Even if it were remotely possible to look at each method of fundraising - which it is not - any organization's deviation or permutation of any set

“guidelines” could make what is otherwise “legal” a criminal violation. The Attorney General cannot provide legal counsel to these charitable organizations. These organizations must rely on their own independent legal counsel to advise them.

While fundraising for charitable organizations can provide important social services and resources to the public, gambling is illegal in Hawaii, regardless of its intentions. On a side note, creating exceptions for any class of persons or entities, absent a compelling reason, compromises the law and may lead to various interpretations and conduct to get around criminal culpability. This ultimately leads to increased potential for criminal violations by those who use exceptions as a loophole to avoid criminal culpability. This may be especially true for the gambling laws.

Accordingly, the Department of the Attorney General respectfully requests that this resolution be held.

Hawai'i Coalition Against Legalized Gambling

1124 Fort Street Mall, Suite 209
Honolulu, HI 96813

Member Organizations

Advocates for Consumer Rights
Animal Rights Hawaii
Buddhist Peace Fellowship
Christian Voice of Hawaii
Church of Jesus Christ of
Latter-day Saints
Church of Perfect Liberty
Common Cause Hawaii
Disciples of Christ
Hale Kipa
Hawaii Appleseed Center
for Law & Economic Justice
Hawaii Assemblies of God
Hawaii Association of
International Buddhists
Hawaii Christian Coalition
Hawaii Conference of
Seventh-day Adventists
Hawaii Conference of the United
Church of Christ (UCC)
Hawaii District United Methodist
Church
Hawaii Family Forum
Hawaii Pacific Baptist Convention
Hawaii Rainbow Coalition
Hawaii Religions for Peace
Hawaii Youth Services Network
Honolulu Friends Meeting
(Quakers)
Honolulu Police Department
Institute for Religion and Social
Change
The Interfaith Alliance Hawaii
Kokua Council
League of Women Voters of Hawaii
Life of the Land (Hawaii)
Dr. Martin Luther King, Jr.
Coalition Hawaii
Mestizo Association
Muslim Association & Islamic
Center of Hawaii
Pacific Gateway Center
Presbytery of the Pacific
Saints Constantine & Helen Greek
Orthodox Church
Smart Business Hawaii
Soto Zen Mission of Hawaii
Temple Emanu-El
Windward Coalition of Churches
The Woman's Board of Missions
for the Pacific Islands (UCC)

Cooperating Organizations

Catholic Charities Hawaii
Catholic Diocese of Honolulu
Chamber of Commerce of Honolulu
Hawaii Bankers Association
Hawaii Business Roundtable
Hawaiian Humane Society
Hawaii State PTSA

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon E. Har, Vice Chair

Friday, April 5th, 2013

2:00 p.m.

Conference Room 325

My name is Tom Kay. I am a kama'aina attorney representing the Hawai'i Coalition Against Legalized Gambling. HCALG is opposed to HR 29, SD1

This resolution places the Attorney General in an untenable position of rendering an opinion regarding Hawaii statutes which already clearly establish that gambling in Hawaii is illegal.

As an example, if a charity distributes free tickets for a raffle at a fundraising dinner this might not constitute an illegal lottery but if the charge for the dinner is in excess of a fair value for the dinner and part of that excess is used to pay cash or give a prize to the winner of the raffle it could be strongly argued that part of the dinner cost was paid for a raffle ticket which could constitute conducting an illegal lottery.

We concur with the Attorney General's testimony of Mar 11, 2013 in opposition to HR 29 stating that speculation on various types of fundraising raffles by charitable organizations would not be productive and changes to the gambling statutes should not be enacted.

We respectfully request that the Committee on Judiciary hold HR 29, SD1

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK W. CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE JK-TA

April 5, 2013

The Honorable Karl Rhodes, Chair
and Members
Committee on Judiciary
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhodes and Members:

Subject: House Resolution No. 29, H.D. 1, Requesting the Department of the Attorney General to Identify and Analyze Permissible and Unlawful Methods of Fundraising for Charitable Organizations

I am Jason Kawabata, Captain of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Resolution No. 29, H.D. 1, Requesting the Department of the Attorney General to Identify and Analyze Permissible and Unlawful Methods of Fundraising for Charitable Organizations.

While the Honolulu Police Department is sympathetic to the funding challenges of charitable organizations, we believe that exploring ways for them to participate in activities similar to lotteries could lead to further support for the legalization of gambling.

In keeping with our conviction of sustaining and enriching communities, the Honolulu Police Department is opposed to House Resolution No. 29, H.D. 1, Requesting the Department of the Attorney General to Identify and Analyze Permissible and Unlawful Methods of Fundraising for Charitable Organizations.

The Honolulu Police Department urges you to oppose House Resolution No. 29, H.D. 1, Requesting the Department of the Attorney General to Identify and Analyze Permissible and Unlawful Methods of Fundraising for Charitable Organizations.

Thank you for the opportunity to testify.

APPROVED:

Handwritten signature of Louis M. Kealoha in black ink.

LOUIS M. KEALOHA
Chief of Police

Sincerely,

Handwritten signature of Jason Kawabata in black ink.

JASON KAWABATA, Captain
Narcotics/Vice Division